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Supreme Court, U.S.
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No. 93-1845

In The

# Supreme Court of the United States

October Term, 1993

WALTER T. PETERS, JR.,

*Petitioner,*

-v-

DELAWARE RIVER PORT AUTHORITY OF PENNSYLVANIA AND NEW JERSEY,

*Respondent.*

*On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit*

## RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED

1. Should certiorari be granted where there is no dispute that the Third Circuit Court of Appeals applied the correct legal standard established by this Court's decisions in *Elrod v. Burns*, 427 U.S. 347 (1976), *Branti v. Finkel*, 445 U.S. 507 (1980) and *Rutan v. Republican Party of Ill.*, 497 U.S. 62 (1990), in holding that party affiliation may be an appropriate requirement for the effective performance for the Office of Secretary of the Delaware River Port Authority of Pennsylvania and New Jersey, a bi-state agency?

*Proposed response: No.*

2. Should certiorari be granted where the Third Circuit's decision is not only completely consistent with this Court's rulings, but with the law of every other Circuit, as well?

*Proposed response: No.*

3. Should certiorari be granted to address the Petitioner's legally unsupportable and overbroad contention that political affiliation can never be a criterion for any job at any bi-state agency?

*Proposed response: No.*

4. Should this Court grant certiorari solely to undertake yet another review of the extensive factual admissions, trial testimony, and conclusive facts of record cited by the Third Circuit's comprehensive opinion?

*Proposed response: No.*

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## STATEMENT OF JURISDICTION

On January 20, 1994, the Third Circuit Court of Appeals reversed the judgment of the United States District Court for the Eastern District of Pennsylvania and directed that court to enter judgment in favor of the Delaware River Port Authority of Pennsylvania and New Jersey ("DRPA"), holding, *inter alia,* that political affiliation can be an appropriate requirement for the effective performance for the high-level position of the Office of Secretary of the DRPA. Petitioner now seeks to invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1254(1).

## STATEMENT OF THE CASE

Petitioner, Walter T. Peters, Jr. ("Petitioner"), alleges that he was not re-elected to the Office of Secretary of the DRPA solely because of his membership in New Jersey's Republican Party and that the DRPA thereby violated 42 U.S.C. § 1983 ("§ 1983") by infringing upon his First Amendment rights.

The DRPA is a bi-state agency of Pennsylvania and New Jersey, formed by a federally-approved interstate compact ("the Compact") pursuant to the United States Constitution, Article I, § 10, clause 3. The Compact provides for a sixteen (16) member Board of Commissioners which in essence runs the DRPA much like a board of directors. The Commissioners meet only once a month and none of the Commissioners is a paid employee of the DRPA. None participate full time in operating the DRPA. The Commissioners rely solely upon high level administrative personnel such as the Secretary to conduct day-to-day operations.

As required by the Compact, the Board is comprised of eight (8) Commissioners from New Jersey and eight (8) Commissioners from Pennsylvania. The eight (8) Commissioners from New Jersey are all directly appointed by the Governor of New Jersey. Six (6)

Commissioners from Pennsylvania are directly appointed by the Governor of Pennsylvania, with the remaining two Commissioner positions occupied by Pennsylvania's popularly elected Auditor General and Treasurer. Pursuant to the Compact, the votes of at least five (5) Commissioners from each state's delegation are required to bind the DRPA to any decision, pass any measure, or to elect Officers such as the Secretary.

The DRPA is charged with the important task of promoting the commerce of the Ports of the Delaware River and constructing and maintaining complex transportation networks between New Jersey and Pennsylvania, such as commuter rail lines. The DRPA maintains and operates bridges spanning the Delaware River and connecting New Jersey and Pennsylvania. The DRPA's mandate thus involves the development of economic opportunities involving resources shared by two states, a mandate that necessarily requires effective access to and use of political channels in various states and political sub-divisions.

The DRPA's Compact provides in relevant part as follows:

**ARTICLE IV**

> For the effectuation of its authorized purposes, the commission is hereby granted the following powers . . .
>
> (d) to *elect* a chairman, vice chairman, secretary and treasurer, and to adopt suitable bylaws for the management of its affairs. *The secretary and treasurer need not be members of the commission*;

Pet. App. at 94a (emphasis added).

Thus, although the DRPA has 1,000 employees, the DRPA's Board of Commissioners conducts *elections* for the appointment of only four (4) positions at the DRPA. 36 P.S. § 3503 (Article IV); N.J.S.A. 32:3-5. Included among the elected Officers are the positions of Secretary and Treasurer *which may or may not be filled by politically appointed members of the Board of Commissioners.* The Compact and By-Laws do not limit the duties to be assigned by the Board to the Secretary, but empower the Board of Commissioners to assign such other duties to the Secretary as "may be directed by the Authority". Pet. App. at 9a.

Accordingly, an Official Job Description for the Office of the Secretary of the DRPA was approved by the Board of Commissioners on June 15, 1983, and remains in effect. Resp. App. at 5a-6a. As the Third Circuit noted, the Job Description empowers the Secretary with significant power over the operations of the DRPA, and assigns to the Secretary the duty to participate in high level meetings and policy-forming discussions, to conceive policy, to conduct public relations for the DRPA, and to act as liaison to public bodies and officials. Resp. App. at 5a-6a.

Petitioner was elected Secretary by the DRPA Board of Commissioners effective September 25, 1989. Petitioner was elected to fill a vacancy in the Office of the Secretary, created when the previous Secretary, Steven Joachim, assumed other duties at the DRPA. Petitioner readily and repeatedly admitted before and during trial that while he was Secretary of the DRPA, he had significant authority over DRPA operations, the expenditure of public funds, and that he dealt directly with New Jersey state governmental officials and met with elected officials on behalf of the DRPA. His admissions are entirely consistent with the completely unrefuted Affidavit of Steven Joachim, the former Secretary of the DRPA, which established that the Secretary, consistent with the Job Description, was a high-level Officer used by the DRPA as a political liaison with state-level legislators. Resp. App. at 1a-4a.

At the conclusion of Petitioner's term as Secretary in January, 1991, Petitioner was not re-elected. Petitioner thereafter commenced this action on October 31, 1991, claiming that his non-election was due to his affiliation with the Republican Party.

The DRPA filed a Motion for Partial Summary Judgment with the trial court contending that political affiliation is an appropriate requirement for the effective performance of the Office of Secretary, based on the DRPA's Compact, its By-Laws and the Official Job Description for the Secretary's position. The DRPA also relied on Petitioner's own sworn testimony, and Mr. Joachim's uncontradicted affidavit, which established that the Secretary of the DRPA, pursuant to the Official Job Description, can be and has been utilized as a political liaison with state legislators and officials. This unrefuted evidence conclusively established that the nature of the responsibilities of the Office of Secretary place it squarely within those classes of public employment described in the *Elrod-Branti-Rutan* line of cases, which recognize that political affiliation may be considered as an appropriate criterion for some jobs.

Petitioner filed a response to the Motion for Partial Summary Judgment, as well as his own Cross-Motion for Partial Summary Judgment. Petitioner did not attempt to contradict any facts of record, such as the affidavit of Mr. Joachim, which established that the Office of Secretary could be a politically sensitive position. Instead, Petitioner asserted that political affiliation could not, as a matter of law, be a criterion for election to the Office of Secretary because the DRPA is a bi-state agency. Petitioner proposed this novel legal theory without citation to any legal precedent. His rationale was that the selection, appointment, hiring or election of *any* employees of the DRPA must be performed on an apolitical basis solely because the DRPA is governed by representatives from more than one state.

On December 11, 1992, the district court granted Petitioner's Cross-Motion for Partial Summary Judgment, and in the process ignored this Court's holdings in the *Elrod-Branti-Rutan* line of cases which require the district court to ascertain if the Office of Secretary is a position for which political affiliation could be a criterion. The district court simply refused to analyze the DRPA's Compact, By-Laws, the Official Job Description or any other facts to determine if the Office of Secretary was subject to the *Elrod-Branti-Rutan* exception. Instead, the district court found that this defense could not be asserted by the DRPA as a matter of law, and so the issue of whether the defense applied as to the Office of Secretary was never addressed.

The district court mistakenly reasoned that because the DRPA is governed by a Board composed of Commissioners appointed by Pennsylvania and New Jersey, that *no* position within the DRPA, much less the elected high-level Office of Secretary, could be a job for which the political affiliation of the candidate could be considered. The district court completely *avoided* ruling, as it was required by legal precedent to do, whether or not the Office of Secretary was a position for which the political affiliation of the candidate could be a criterion. Instead, the district court made a remarkable and much broader ruling. The district court held that despite the DRPA's enabling legislation, that the DRPA must be run in a completely apolitical manner simply because it is a bi-state agency. The district court therefore held that political considerations cannot be a factor in *any* hiring decision at the DRPA, regardless of the duties assigned to any position. The district court therefore failed to even address the applicability of any recognized exception to the *Elrod-Branti-Rutan* rule against considering political affiliation in hiring public employees.

This matter thereafter proceeded to trial on December 28, 1992, and the jury returned a verdict in favor of Petitioner on January 7, 1993, which the district court entered on January 8,

1993. The DRPA filed two separate appeals with the Third Circuit that were consolidated. The DRPA's first appeal, docketed at 92-2101, addressed the district court's novel and unprecedented December 11, 1992 order granting partial summary judgment for Petitioner. The DRPA's second appeal, docketed at 93-1278, pertained, *inter alia,* to the district court's denial of the DRPA's renewed motion for judgment as a matter of law and for new trial.

On January 20, 1994 the Third Circuit Court of Appeals, after a thorough review of the record and Petitioner's repeated admissions before and during trial, reversed the district court's entry of judgment in favor of Petitioner. As an initial matter, the Third Circuit rejected the district court's unfounded and unprecedented ruling that the DRPA is not entitled to utilize the *Elrod-Branti-Rutan* exception simply because the DRPA is a bi-state agency. The Third Circuit first emphasized that there was no legal support in any decision from this Court, or any other court, for the district court's ruling. Pet. App. at 21a.

The Third Circuit then thoroughly examined relevant statutes and law in light of undisputed facts and properly concluded that the DRPA is not apolitical as a matter of law simply because it is governed by representatives from more than one state. If anything, the complex political environment within which the DRPA operates mandates that political affiliation be a requisite for high-level employees of the DRPA, who must be able to access each state's political channels so as to ensure that the mandate of the DRPA is carried out. The Third Circuit also took judicial notice of numerous newspaper articles demonstrating that the DRPA is in fact embroiled in partisan politics, as the Pennsylvania and New Jersey delegations to the DRPA are often in economic competition with each other. Pet. App. at 25a-28a.

The Third Circuit, after conducting the factual analysis the trial court refused to conduct, firmly rejected the district court's novel ruling:

> We reject the proposition that a bi-state entity, by its very nature, mandates that the functions of the offices within the entity be carried out in a non-political manner. The district court cited no authority in the Compact itself, any state or federal legislation, or case law, requiring the DRPA to ignore the reality of partisan political and economic interests in order to achieve its complex and broad goals. The rationale of the district court would hinder and stifle the Board from utilizing high level personnel in a manner which could effectively accomplish its broad-ranging aims and objectives. Nothing in law or political reality suggests that government entities composed of membership from more than one state, including the DRPA, should be prevented from demonstrating that the exception to *Branti-Elrod* protection applies.

Pet. App. at 29a.

The Third Circuit then held that the DRPA could consider political affiliation in electing an individual to the high-level Office of Secretary. In so doing, the Third Circuit specifically applied the exact legal standard espoused by this Court, namely, whether political affiliation is an appropriate requirement for the effective performance of the position at issue. Resp. App. at 6a-7a, 17a, 29a, 32a. The Third Circuit held that political affiliation could be an appropriate criterion given the broad scope of power and responsibilities inherent in the Office of Secretary of the DRPA as evidenced not only by the Official Job Description, but also by the Petitioner's own admissions and testimony.

Because the trial court refused to even address this controlling issue, the Third Circuit thoroughly reviewed the pre-trial record in

support of its conclusion that political affiliation is an appropriate requirement for the Secretary's position. Included in this record was Petitioner's deposition testimony wherein he recounted meeting with New Jersey state officials and various state legislators. Pet. App. at 31a. The Third Circuit quoted from Petitioner's resume, wherein he described his duties as Secretary of the DRPA, as being "[r]esponsible for direction and management of total daily operations of an Authority operating four bridges, realizing $100 million in annual revenues and employing a professional and skilled staff of approximately 1,000. Manage an annual budget of $50 million. . ." Resp. App. at 11a. These pre-trial admissions were repeatedly echoed throughout the trial transcript as Petitioner insisted that he essentially ran the DRPA in discharging his duties as Secretary. The Third Circuit, in light of this overwhelming evidence that the trial court refused to even address, properly concluded that political affiliation can be an appropriate requirement for the effective performance of the position of Secretary of the DRPA. On February 22, 1994, the Third Circuit overwhelmingly rejected Petitioner's request for re-hearing in banc. Pet. App. at 1a.

## REASONS FOR DENYING THE WRIT

Pursuant to Supreme Court Rule 10.1, a petition for a writ of certiorari will not be granted unless "there are special and important reasons therefor." It is clear that no such reasons exist in this matter. The Third Circuit has not "decided a federal question in a way that conflicts with applicable decisions of this Court", *see* Supreme Court Rule 10.1(c), nor has the Third Circuit "rendered a decision in conflict with the decision of another United States court of appeals on the same matter", *see* Supreme Court Rule 10.1(a). Petitioner would have this Court believe otherwise, but a review of relevant caselaw (as set forth herein) establishes that there is no such conflict even in the slightest respect.

Neither does this case present an unsettled question of

important federal law. *See* Supreme Court Rule 10.1(c). Indeed, Petitioner primarily seeks to have this Court review the Third Circuit's correct conclusion that the DRPA, a bi-state governmental entity, does not operate in a political vacuum. This hardly involves an "important" question of federal statutory or constitutional law.

The Third Circuit, unlike the trial court, referenced and utilized the proper test set forth by this Court in considering whether a position is subject to the *Elrod-Branti-Rutan* exception, *i.e.*, whether political affiliation is an appropriate requirement for the effective performance of the position at issue. Petitioner's attempt to convince this Court otherwise must fail, as "[t]he mere assertion of conflict with Supreme Court precedent will not suffice. Rule 10 requires that the application of the precedent to the case at bar be clear, and that . . . the federal court of appeals, did not follow that precedent." 13 Moore's Federal Practice ¶ 810.45 (footnote omitted). Petitioner has not made this showing because he cannot.

A principal purpose of certiorari jurisdiction "is to resolve conflicts among the Circuit Courts of Appeals . . . concerning the meaning of provisions of federal law." *Braxton v. United States,* 500 U.S. 344, 347 (1991). However, there must be "a real and embarrassing conflict of opinion and authority between the circuit courts of appeal." *Layne & Bowler Corp. v. Western Well Works,* 261 U.S. 387, 393 (1923).

The substantive rule of law applied by the Third Circuit is not only entirely consistent with this Court's decisions, but also those from all the other circuits. Petitioner has not identified any difference in substantive law applied by the various circuits, but only a difference in ultimate results reached in cases due to differing factual scenarios. This is not the kind of "conflict" that certiorari jurisdiction is designed to address.

## I.

## THE THIRD CIRCUIT COURT OF APPEALS PLAINLY ADHERED TO THE TEST ESPOUSED BY THIS COURT, AND APPLIED BY OTHER COURTS OF APPEALS, WHEN RULING IN FAVOR OF THE DRPA ON PETITIONER'S FIRST AMENDMENT CLAIM.

Plaintiff's cause of action is based upon a series of this Court's decisions holding it to be a violation of 42 U.S.C. § 1983 for a public employee to be demoted, transferred, or fired, or to not be re-appointed to a position on the basis of the employee's political affiliation. At the same time, this Court has held that there are certain exceptions to this rule so that some dismissals or non-appointments may be based upon consideration of the employee's political affiliation, without offense to the First Amendment. *Rutan,* 497 U.S. at 71, n.5; *Branti,* 445 U.S. at 518; *Elrod,* 427 U.S. at 367, 375 (this line of cases is hereinafter referred to as *Elrod-Branti-Rutan).* In *Elrod,* this Court explained that such an exception exists for public employees who act as advisors or who formulate plans for the implementation of broad goals. *Elrod,* 427 U.S. at 368.

This Court however, refined this test in *Branti*:

> In sum, the ultimate inquiry is not whether the label 'policymaker' or 'confidential' fits a particular position; rather, *the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.*

*Branti,* 445 U.S. at 518 (emphasis added).

The *Branti* formulation was re-affirmed by this Court in *Rutan*:

> *Branti v. Finkel* [citation omitted], also refined the exception created by *Elrod v. Burns*, [citation omitted], for certain employees. In *Elrod*, we suggested that policymaking and confidential employees probably could be dismissed on the basis of their political views [citation omitted]. In *Branti*, we said that a State demonstrates a compelling interest in infringing First Amendment rights only when it can show that 'party affiliation is an appropriate requirement for the effective performance of the public office involved.'

*Rutan*, 497 U.S. at 71, n.5 (quoting *Branti*, 445 U.S. at 518).

The Third Circuit in the case *sub judice* could not have been any clearer in applying the precise test fashioned by this Court:

> The ultimate question presented in this appeal is whether party affiliation is an appropriate requirement for the effective performance of the position of Secretary of the DRPA. Because we find that it is, we will reverse and direct the district court to enter judgment in favor of the DRPA.

Pet. App. at 6a-7a. Petitioner's contention that the Third Circuit misapplied this Court's holdings in *Elrod* and *Branti* is simply incorrect. Unlike the trial court, which refused to address the issue at all, the Third Circuit undertook the exact inquiry mandated by this Court and found that political affiliation is an appropriate requirement for the position.

Accordingly, the Third Circuit did not decide this case in a manner that conflicts with this Court's decisions in *Elrod, Branti* and *Rutan*. The Third Circuit applied this Court's precedent and the same test as does every other circuit in ruling in favor of the DRPA. Consequently, there is no compelling reason to grant a writ of certiorari.

## II.

## THE THIRD CIRCUIT'S DECISION IS NOT INCONSISTENT WITH DECISIONS FROM OTHER CIRCUITS.

Contrary to the Petitioner's bald assertions, the test applied by the Third Circuit in analyzing the nature of the position of Secretary of the DRPA is the same test applied in every other Circuit in cases of this type, as mandated by this Court. *See, e.g., Rice v. Ohio Dept. of Transp.*, 14 F.3d 1133, 1140 (6th Cir. 1994); *McCabe v. Sharett*, 12 F.3d 1558, 1565 (11th Cir. 1994); *Selch v. Letts*, 5 F.3d 1040, 1043 (7th Cir. 1993), *cert. denied*, 114 S. Ct. 1189; *O'Connor v. Steeves*, 994 F.2d 905, 909 (1st Cir. 1993), *cert. denied*, 114 S. Ct. 634; *Regan v. Boogertman*, 984 F.2d 577, 580 (2d Cir. 1993); *Correa v. Fischer*, 982 F.2d 931, 933 (5th Cir. 1993); *Green v. Henley*, 924 F.2d 185, 186 (10th Cir. 1991); *Stott v. Haworth*, 916 F.2d 134, 140 (4th Cir. 1990); *Hall v. Ford*, 856 F.2d 255, 262 (D.C. Cir. 1988); *Sweeney v. Bond*, 669 F.2d 542, 546 (8th Cir. 1982), *cert. denied*, 459 U.S. 878.

Petitioner nevertheless argues that this Court should issue a writ of certiorari because the Third Circuit's decision is allegedly inconsistent with decisions of other circuit courts of appeal in *DeChoudens v. Governmental Development Bank*, 801 F.2d 5 (1st Cir. 1989), *cert. denied*, 481 U.S. 1013; *Jones v. Dodson*, 727 F.2d 1329 (4th Cir. 1984); *Barns v. Bosley*, 745 F.2d 501 (8th Cir. 1984), *cert. denied*, 471 U.S. 1017; and *Gibbons v. Bond*, 668 F.2d 967 (8th

Cir. 1982).[1] In fact, the courts in each of these cases utilized the test as set forth by this Court in *Branti,* thereby rendering Petitioner's attempt to manufacture a split among the circuits meritless.

The First Circuit in *De Choudens* stated that "*Elrod* and *Branti* require us to examine whether political affiliation is an appropriate requirement for plaintiff's particular position", *De Choudens,* 801 F.2d at 9. The Fourth Circuit framed the controlling issue as follows: "neither may a public employee be discharged because of the employee's political party affiliation, unless the employer can show that affiliation with the employer's party is essential to the employee's effectiveness in carrying out the responsibilities of the position held." *Jones,* 727 F.2d at 1334. The Eighth Circuit likewise utilized the *Branti* test in *Gibbons,* 668 F.2d at 968 and *Barns,* 745 F.2d at 503. There is no discernible conflict in these decisions, and each is consistent with this Court's precedent.

Petitioner is really asking this Court to grant certiorari only because of a difference in *result* among these courts. Courts can routinely reach different results when applying the same legal principles, if only because each decision turns on its own set of facts. A mere difference in result does not, therefore, establish a conflict among the circuits under Supreme Court Rule 10, and if it did the basis of certiorari jurisdiction would be immensely expanded. The circuit courts of appeal must actually disagree as to the interpretation of what the substantive rule of law should be. There is absolutely no such divergence of opinion here.[2]

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1. Petitioner also cites *Crisp v. Bond,* 536 F. Supp. 137 (W.D. Mo. 1982); *DeLaCruz v. Pruitt,* 590 F. Supp. 1296, 1301-02 (N.D. Ind. 1984); and *Gannor v. Daley,* 561 F. Supp. 1377 (N.D. Ill. 1983), in support of this assertion. However, *Crisp, DeLaCruz* and *Gannor* are district court cases. This Court does not grant certiorari for a conflict between a district court decision and a circuit court decision. *See* Supreme Court Rule 10.1(a).

2. The power and responsibility inherent in the position of Secretary of the (Cont'd)

Petitioner also contends that the Third Circuit's opinion is in conflict with a prior decision of the Third Circuit in *Savarese v. Agriss*, 883 F.2d 1194 (3d Cir. 1989). This Court does not, however, grant certiorari due to an alleged split within a Circuit.[3] *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) ("doubt about the respect to be accorded to a previous decision of a different panel should not be the occasion for invoking so exceptional a jurisdiction of this Court as that on certification. It is primarily the task of a Court of Appeals to reconcile its internal difficulties").

For the same reason, this Court must not grant certiorari on the grounds that the Third Circuit purportedly rejected an amorphous "highly likely" standard supposedly adopted by it in three prior cases: *Waskovich v. Morgano*, 2 F.3d 1292 (3d Cir. 1993); *Zold v. Township of Mantua*, 935 F.2d 633 (2d Cir. 1991); and *Ness v. Marshall*, 660 F.2d 517 (3d Cir. 1981). To the contrary, the Third Circuit in each of those decisions, as in this case, applied the correct test set forth by this Court in *Branti*. *See Waskovich*, 2 F.3d at 1297 ("the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved") (quoting *Branti*, 445 U.S. at 518); *Zold*, 935 F.2d at 635 ("the question is whether the hiring authority can demonstrate that party affiliation is an

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(Cont'd)
DRPA is far greater than any of the positions in the decisions relied on by Petitioner, as demonstrated *infra* at pp. Resp. at 19a-26a. Petitioner's reliance on *DeChoudens, Jones, Gibbons* and *Barns* is therefore fundamentally misplaced, both legally and factually.

3. In addition, the Third Circuit's decision in *Savarese* is plainly inapposite, as the defendants in that case did not even raise the *Elrod-Branti-Rutan* exception as a defense. *See Savarese*, 883 F.2d at 1198, n.7. Moreover, the Honorable Robert E. Cowen, author of the Third Circuit's opinion in this case, was the author of the court's opinion in *Savarese*. Judge Cowen would have followed *Savarese* if it were on point, but it is not.

appropriate requirement for the effective performance of the public office involved") (quoting *Branti*, 445 U.S. at 518); *Ness*, 660 F.2d at 520 ("the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved") (quoting *Branti*, 445 U.S. at 518).[4]

## III.

## THE THIRD CIRCUIT COURT OF APPEALS CORRECTLY HELD THAT THERE WAS NO BASIS IN LAW OR FACT FOR THE DISTRICT COURT'S RULING THAT THE DRPA MAY NEVER CONSIDER THE POLITICAL AFFILIATION OF ANY HIGH-LEVEL EMPLOYEE SIMPLY BECAUSE IT IS A BI-STATE AGENCY.

The district court determined that the *Elrod-Branti-Rutan* exception could not apply to any employee at the DRPA, summarily concluding that the bi-state nature of the DRPA mandates that every one of its hiring decisions be carried out without consideration of the political affiliation of any candidate. In doing so, the trial court did not analyze or cite any caselaw or statutes. The Third Circuit squarely rejected the district court's novel rationale after undertaking the appropriate legal and factual inquiry mandated by this Court's controlling precedent.

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4. Further, the Honorable Delores K. Sloviter, Chief Judge of the Third Circuit, authored the panel's opinions in *Waskovich* and *Zold*. Chief Judge Sloviter voted against Petitioner's application for re-hearing in banc, which was based on Petitioner's argument that the panel herein improperly rejected the "highly likely" standard purportedly utilized by the Third Circuit panels in *Waskovich* and *Zold*. However, Chief Judge Sloviter would surely have voted in favor of re-hearing in banc if she thought that the panel's decision in the case *sub judice* was in conflict with the *Waskovich* and *Zold* decisions.

involves an important question of federal law that is unsettled: "whether employees of a bi-state agency, which is inherently and functionally non-partisan, can be subject to patronage dismissal based upon their partisan beliefs." Petitioner's formulation of the question is anchored on an incorrect assumption.

The Petitioner incorrectly assumes that the DRPA is "inherently and functionally non-partisan". Like the trial court, the Petitioner is merely offering his opinion as to how the DRPA *should* be operated, and not an analysis based on fact, law or political reality. Although the trial court declined to even review relevant statutes or unrefuted facts in rendering its decision, the Third Circuit reviewed the Compact, Petitioner's own admissions, the Job Description, and the unrefuted affidavit of the former Secretary of the DRPA in concluding that the DRPA cannot, and was not intended to, operate in a political vacuum.

Because the district court failed to apply the legal test mandated by this Court, and instead rendered a gratuitous judgment on how it believed the DRPA should be operated, the district court rendered an opinion that effectively barred the DRPA from making *any* hiring decision based on political considerations, regardless of the position involved. The Third Circuit was compelled to correct that egregious legal error on appeal.

The Third Circuit noted that the district court's unprecedented ruling lacked any legal support whatsoever:

> No Supreme Court decision, or any other decision of which we are aware, has held or even suggested that merely because a government entity is composed of membership from more than one state, the exception to *Branti-Elrod* would not apply to positions within that entity.

* * *

> There is little reason to believe, *a priori*, that merely because a government entity is composed of membership from more than one state, that the officers employed by that entity cannot formulate plans or implement broad goals. Furthermore, the mere fact that an entity is composed of membership from more than one state does not suggest that party affiliation will be irrelevant to the effective performance of the offices within that entity.

Pet. App. at 21a-22a.

The Third Circuit then analyzed the nature of the DRPA, mindful of its broad powers and the important economic and political objectives it is intended to accomplish under the Compact, including the development of a master economic plan for the Port District. The Third Circuit correctly concluded that politics was an essential element of the DRPA's mandate. For example, before adopting a master economic plan as envisioned by the Compact, the DRPA must consult with and consider recommendations from State, county and municipal officials. The Third Circuit aptly stated that such consultation and interaction with government officials will involve accessing political channels, thereby making party affiliation an appropriate criterion for "higher officials within the DRPA." Pet. App. at 23a.

The Third Circuit emphasized that because the DRPA operates within an increasingly complex political arena, political affiliation can in fact be an appropriate requirement for high-level positions at the DRPA:

> Because the DRPA serves at least two different

> states' interests, it is forced to deal with more than one administration and a complex group of political interests. The DRPA needs officers who are capable of efficiently, effectively and loyally accessing the political channels that influence the DRPA's agenda and direction. The DRPA may choose to retain employees who can be knowledgeable of and be trusted by each state's executive and legislative political infrastructures. Party affiliation can be expected to be an important requirement to effectively carry out these tasks.

Pet. App. at 25a.

The Third Circuit also rejected the district court's unrealistic and unsupported conclusion that all positions within the DRPA must be filled only by individuals who will always serve the mutual political interests of New Jersey and Pennsylvania. While the DRPA was created to achieve mutually beneficial goals, the Compact does not compel Pennsylvania and New Jersey to "abandon all partisan political considerations and interests", as Petitioner unrealistically claims. (Pet App. at 25a.) In support of its rationale, the Third Circuit took judicial notice of numerous newspaper articles demonstrating that the Pennsylvania and New Jersey delegations continue to compete in seeking advantages for their respective jurisdictions through the economic forum supplied by the DRPA. Pet. App. at 25a-28a. Therefore, political loyalty among certain high level employees of the DRPA can in fact be appropriate to maintain a balance of power at the DRPA between New Jersey and Pennsylvania.

The Third Circuit further noted that the Compact allows the DRPA Board of Commissioners to elect their own members, *who are by definition political appointees or elected political officials,*

to the Office of Secretary if the Board so desires. The Compact itself therefore expressly contemplates that the position of Secretary could be "filled by individuals who are loyal to a particular state's governing administration, a particular political party, or to a particular group within the Board." Pet. App. at 27a. As a result, "party affiliation can be expected to be an important requirement for the effective performance of the higher positions within the DRPA, including that of Secretary." Pet. App. at 27a.

The Third Circuit thus correctly concluded that the DRPA is not immune from the vagaries of partisan politics. Indeed, the DRPA has even more of a need for high-level employees who are capable of accessing each state's political channels because of the numerous interests at hand. Therefore, as held by the Third Circuit, political affiliation can be an appropriate requirement for the effective performance of the high level Office of Secretary. *See also, Tomczak v. City of Chicago,* 765 F.2d 633, 641 (7th Cir. 1985), *cert. denied,* 474 U.S. 946 (rejected plaintiff's argument that politics not implicated by position in Water Department because position provided services to all residents, as "an unduly myopic view of the role of politics in the seemingly apolitical context of universal provision of services").

## IV.

## CERTIORARI SHOULD NOT BE GRANTED SOLELY TO HAVE THIS COURT CONDUCT YET ANOTHER REVIEW OF THE EXTENSIVE FACTUAL ADMISSIONS, TRIAL TESTIMONY, AND OTHER FACTS OF RECORD THOROUGHLY ANALYZED BY THE THIRD CIRCUIT.

Petitioner's request for a writ of certiorari really amounts to nothing more than an attempt to have this Court conduct a re-review of an extensive pre-trial and trial record which established that the Office of Secretary is a position for which political affiliation could

be a criterion. This factual/legal inquiry was already thoroughly addressed by the Third Circuit in a comprehensive opinion (because the trial court refused to even address the matter), and the Petitioner now improperly seeks the jurisdiction of this Court only to re-open this fact-intensive inquiry. Not only is this an improper basis for jurisdiction, but as set forth below, the Third Circuit's review was thorough, correct, and any further review of the issue would not produce any different result.

As the Third Circuit noted, Article III, Section D of the Bylaws of the DRPA defines the Office of Secretary as follows:

> The Secretary reporting to the Executive Director, shall be the custodian of all records and the seal of the Authority and shall keep accurate minutes of the meetings of the Authority and all of the Committees thereof. He shall, on behalf of the Authority, certify, when required, copies of records and shall execute legal instruments and documents on behalf of the Authority when ordered to do so, and affix the seal of the Authority to the same, *and shall perform such other duties as may be directed by the Authority.*

Pet. App. at 99a (emphasis added). Pursuant to the final clause of Article III, Section D of the Bylaws, the DRPA did indeed direct the Secretary to "perform such other duties" by way of an Official Job Description promulgated by the DRPA's Board of Commissioners on June 15, 1983. Resp. App. at 5a-10a.

The Official Job Description delegates far more than merely "ministerial" duties to the Office of Secretary. Indeed, the Third Circuit noted that, according to the Official Job Description, the Secretary is charged with: reviewing correspondence, reports,

communications and sources of information and making appropriate recommendations thereon to the Executive Director of the DRPA; planning for the improvement and expansion of DRPA facilities, operations, organization and management; participating in all high-level DRPA matters with Commissioners, committees, staff, public officers, and other public bodies; participating in all policy-forming discussions during executive sessions of the DRPA; acting as liaison and maintaining good public relations with other agencies and representing the Executive Director with other public agencies and members of the public; coordinating all operational divisions and staff at the DRPA; interpreting and executing DRPA policy; and keeping the Executive Director advised of developments in the law, availability of funds, and federal, state and local programs of interest. Resp. App. at 5a-6a.

Petitioner testified under oath that the By-Laws and Official Job Description set forth exactly the duties of the Secretary of the DRPA:

> Q. And am I correct in understanding that these by-laws and this job description pursuant to the by-laws set forth the responsibilities not only what you personally discharged as secretary but which are discharged by anybody who would hold the position of Secretary of the Port Authority?
>
> A. Yes.

Resp. App. at 22a.

The Third Circuit ruled that the pre-trial record substantiated the broad scope of powers inherent in the Office of Secretary of the DRPA. Petitioner admitted at his deposition that as Secretary he met

with New Jersey state officials and New Jersey state task forces to coordinate actions of the DRPA with other state agencies. Pet. App. at 31a. Petitioner also admitted that he communicated with state legislators regarding DRPA matters and that he had direct communication with the media while Secretary. Pet. App. at 31a. This public liaison function is consistent with the Official Job Description.

The pre-trial record also contained numerous unrefuted documents authored by the Petitioner which further underscore the broad scope of powers possessed by the Office of Secretary. These documents revealed Petitioner's extensive authority over DRPA expenditures, capital projects, personnel discipline and salaries, and budgetary matters. Resp. App. at 30a-33a.

The Third Circuit quoted from Petitioner's resume, which details a twenty (20) year history of politically-appointed positions, including extensive experience as a lobbyist and political campaign manager. Resp. App. at 11a-17a. Petitioner's resume described his duties at the DRPA in part as follows:

> Responsible for direction and management of total daily operations of an Authority operating four bridges realizing $100,000,000 in annual revenues and employing a professional and skilled staff of approximately 1,000. Manage an annual budget of $50,000,000. Promoted the ports of the Delaware Valley while supervising daily activities of the Budget, Economic Development and Port Operations, Bridges, Public Relations, Personnel, Security, and Engineering Departments.

Resp. App. at 11a. These duties do not include those also enumerated in his resume pertaining to his complete control over

the operations of the DRPA's wholly-owned subsidiary, the Port Authority Transit Corporation. Resp. App. at 11a-12a.

The Third Circuit also discussed another document authored by the Petitioner which analyzed the DRPA's organizational structures and recommended the merger of departments and divisions, the realignment of authority, and a complete overhaul of the DRPA administrative chain of command. Pet App. at 32a. The Third Circuit concluded that the Petitioner could hardly recommend a basic reorganization of the DRPA if he was merely a low level employee. Pet. App. at 32a. Finally, the uncontested Affidavit of Steven Joachim, former Secretary of the DRPA, attested to the fact that as Secretary, consistent with the Job Description, he was assigned politically sensitive and important responsibilities, *inter alia,* on a variety of important matters including acting as liaison to Pennsylvania politicians. Resp. App. at 1a-4a.

The far-reaching powers and responsibilities of the Secretary's office were also substantiated by Petitioner's trial testimony:

> Q. We've talked about the budget, we've talked about this organizational chart. What other things did you do on a day-to-day basis at the Delaware River Port Authority when you started working there?
>
> A. *Expenditures were passed through me. Well, naturally, the budgets, personnel actions, disciplinary actions, just about everything that went on at the Delaware River Port Authority.*
>
> * * *

Q. But still the acting director of the bridge position, instead of discharging the responsibility came to you, for your approvals on various of these items, didn't he?

A. *All expenditures and personnel actions, regardless of this or whether it was PATCO or whether it was world trade division, all came across my desk. I was the central clearing point, I guess you would say.*

* * *

Q. . . . Did you tell the truth when you advised all of these people to whom you sent resumes in that outside world, that you were in fact the Chief of Staff of the Delaware River Port Authority?

A. I told all of the people that got this resume that I did the work of a Chief of Staff at the Delaware River Port Authority. That I was familiar with budgets, that I worked with budgets, that I managed budgets, that I managed employees, that I had hearings, that I handled purchasing, everything that a chief of staff did is what I did.

* * *

Resp. App. at 19a-20a, 23a-24a, 26a-27a (emphasis added).

The Third Circuit thus readily concluded that "the duties

inherent in the position of Secretary are such that party affiliation is an appropriate requirement for the effective performance of that position."[5] Pet. App. at 32a. The Third Circuit's conclusion is consistent with decisions from other circuits, which have held political affiliation to be an appropriate criterion for positions containing far less duties and responsibilities than those of the Secretary of the DRPA. *See, e.g., Rice,* 14 F.3d at 1141 (district administrative assistant in department of transportation); *Selch,* 5 F.3d at 1045-47 (subdistrict superintendent of department of highways); *Waskovich,* 2 F.3d at 1298-99 (director of veterans service affairs); *O'Connor,* 994 F.2d at 910-11 (superintendent of public works); *Regan,* 984 F.2d at 580-81 (township deputy tax receiver); *Green,* 924 F.2d at 187 (administrator of transportation division of corporation commission who met with public representatives to discuss commission's policies); *Savage v. Gorski,* 850 F.2d 64, 68 (2d Cir. 1988) (deputy service officer of county veterans service agency); *Brown,* 787 F.2d at 170 (assistant director of public information); *Tomczak,* 765 F.2d at 640-41 (first deputy commissioner of department of water); *Shakman v.*

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5. As he has done unsuccessfully throughout this case, Petitioner again mistakenly relies on deposition testimony of two DRPA commissioners, who testified that they believed that Petitioner's political affiliation was not necessary for Petitioner to perform the duties that he performed as Secretary of the DRPA. Petitioner's reliance on this testimony is misguided, for the relevant inquiry must focus on the position itself, not the position as performed by Petitioner. *Waskovich,* 2 F.3d at 1297. The rationale supporting this rule is sound: "[w]hile it is conceivable that a governor might employ speech writing assistants without regard to their political affiliation, we would not want to prevent governors in general from using political affiliation as a criterion for such positions." *Ness,* 660 F.2d at 522; *See Williams v. City of River Rouge,* 909 F.2d 151, 155 (6th Cir. 1990) ("it is necessary to consider the position of city attorney itself, rather than the position as performed by appellant. Any other approach would tend to bind a later mayor to employ the city attorney in the way that the official has been employed in the past"); *Mummau v. Ranck,* 531 F. Supp. 402, 405 (E.D. Pa. 1982) (future employers "should not be bound by the restrictive functions and office assignments which antedate their tenure").

*Democratic Organization of Cook County*, 722 F.2d 1307, 1309 (7th Cir. 1983) (superintendent of employment for park district), *cert. denied*, 464 U.S. 916; *Ness*, 660 F.2d at 518-19 (city solicitor and assistant city solicitor); *Nekolny v. Painter*, 653 F.2d 1164, 1170 (7th Cir. 1981) (senior citizens' coordinator).

## CONCLUSION

The Third Circuit properly rejected the district court's unprecedented ruling that the DRPA is not entitled to invoke the *Elrod-Branti-Rutan* exception simply because it is a bi-state agency. There was no legal support or factual basis for the district court's decision not to apply controlling precedent in this case. The district court's refusal to apply this Court's controlling precedent does not present an important question of federal law for which a writ may be granted.

The Third Circuit Court of Appeals applied the proper test in ruling against Petitioner on his First Amendment claim. The Third Circuit analyzed the Official Job Description for the position of Secretary and concluded that it was a position which possessed inherently broad power, policymaking authority, and was one for which political affiliation could be a criterion. The Third Circuit's conclusion is more than amply supported by the extensive evidence of record. The Third Circuit's decision is entirely consistent with that from other circuits, contrary to Petitioner's strained protestations of "conflict". What the Petitioner really desires is only a re-review of an extensive pre-trial and trial record, a task already thoroughly performed by the Third Circuit.

Consequently, there are no special or important reasons why this Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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MARK J. SCHWEMLER
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## APPENDIX A — AFFIDAVIT OF STEVEN JOACHIM

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 91-6814

WALTER T. PETERS, JR.,

Plaintiff,

vs.

DELAWARE RIVER PORT AUTHORITY OF PENNSYLVANIA AND NEW JERSEY

Defendant.

AFFIDAVIT OF STEVEN JOACHIM

Steven Joachim hereby avers the following as true and correct to the best of his knowledge, information and belief:

1. I am presently an employee of the Delaware River Port Authority ("DRPA") and work as Director of Management Information Systems, a position I assumed in September of 1989.

2. Prior to my present position with the DRPA, I held the Office of Secretary of the DRPA, having first been elected to that position in May, 1982. I served as Secretary until September, 1989.

3. I am familiar with the document appended hereto as Attachment "1", which is the Official Position Description for the Office of Secretary of the DRPA. This job description was approved by the DRPA Board of Commissioners in 1983, during my tenure as Secretary.

*Appendix A*

4. While I acted as Secretary of the DRPA I performed all the duties described in Attachment "1".

5. While acting as Secretary I had no other title at the DRPA.

6. While Secretary of the DRPA I was expected to and did make recommendations to the Executive Director (previously referred to as "President") of the DRPA regarding the nature and contents of internal and external correspondence, reports and other communications pertaining to the business of the DRPA.

7. While Secretary of the DRPA I was expected to and did assist in planning for the improvement and expansion of DRPA facilities, operations, organization and management.

8. While Secretary of the DRPA I was expected to and did participate in high level DRPA matters with the DRPA Commissioners, Committees established by the DRPA Board of Commissioners, the staff and other public officers (including state legislators).

9. While Secretary of the DRPA I was assigned to communicate with state legislators, particularly those from Pennsylvania, concerning DRPA projects and programs. Such responsibilities would be given to me because of my familiarity with certain Pennsylvania legislators and their staff.

10. As Secretary of the DRPA, I was expected to and did attend executive sessions of the DRPA as requested and actually participated in policy-forming discussions with high level DRPA staff and Commissioners. I participated in discussions concerning confidential DRPA matters such as legal matters with other DRPA officers and DRPA Commissioners.

*Appendix A*

11. As Secretary of the DRPA I was expected to and did act as liaison for the DRPA with state legislators and other public bodies. On occasion, I would attend certain functions as a representative of the DRPA and would do so primarily for public relations purposes.

12. As Secretary of the DRPA I assisted in coordinating the operational divisions of the DRPA to implement the policies of the DRPA and to achieve objectives set by the Board of Commissioners.

13. As Secretary of the DRPA I was expected to and did make recommendations and supply input to conceive, interpret and execute the policies of the DRPA.

14. As Secretary of the DRPA I was expected to and did keep the Executive Director (previously referred to as "President") of the DRPA advised of developments in the law, availability of funds and the existence of state and local programs which may be of interest to the DRPA.

15. During my tenure as Secretary I was often instructed to meet and discuss DRPA programs, policies and objectives with state legislators and executives, particularly those from Pennsylvania.

16. The Office of Secretary, as per the Official Position Description, is assigned some ministerial duties. At the time I acted as Secretary these were not the principal duties of the Secretary and most of the Secretary's time was consumed in discharging the other more important responsibilities described above.

17. Based upon my personal knowledge and experience the Secretary has always been utilized by the DRPA Board of

*Appendix A*

Commissioners as one of the highest level executives at the DRPA with broad responsibilities and duties.

s/ Steven Joachim
STEVEN JOACHIM

Sworn to and Subscribed
before me this 19th day of
November, 1992

s/ Arlette A. Padden
Notary Public
ARLETTE A. PADDEN
Notary Public Of The Commonwealth of Pennsylvania
My Commission Expires July 10, 1995

*Appendix A*

**ATTACHMENT 1**

POSITION DESCRIPTION

DELAWARE RIVER PORT AUTHORITY
OF PENNSYLVANIA AND NEW JERSEY

Position Title: *SECRETARY*

Position No.: *00-3*

Division: *President*

Grade: *Ungraded*

BASIC FUNCTION: Is responsible to the President and as an elected officer of the Authority, performs all secretarial and custodial duties as delegated by the By-Laws. Performs such duties as directed by the Authority and the President.

SPECIFIC POSITION DUTIES:

1. Executes all legal documents of the Authority and makes appropriate dispositions. Maintains files of all legal documents, executed agreements and executed contracts.

2. Acts as custodian of all records and the seal of the Authority.

3. Prepares accurate minutes of the meetings of the Authority and of all Standing Committees.

4. Develops meeting agenda, arranges for Authority and Committee meetings and provides notification thereof.

5. Acts as an authorized signatory of Authority and PATCO checks.

*Appendix A*

6. Review internal and external correspondence, reports and other communications and sources of information and makes reports with recommendations on their contents to the President.

7. Assists in planning for improvement and expansion of Authority facilities, operations, and organization and management.

8. Participates in high level Authority matters with Commissioners, Committees, operating staff, public officers and other bodies.

9. Attends all executive sessions of the Authority as requested and participates in all policy-forming discussions.

10. Acts as liaison and maintains good public relations with outside agencies; represents the President with other public bodies, professional organizations, civic groups and members of the public and keeps the President advised on trends in current thought and matters of interest to the Authority.

11. Assists in coordination of all operational divisions and staff and other public bodies.

12. Assists the Executive Vice President through research, report and recommendations to conceive policy for operating divisions and interpreting and executing Authority policy.

13. Keeps the President advised of public law, availability of funds, and federal, state and local programs of interest to the Authority.

Approved by D.R.P.A. Commissioners
at the meeting of *6/15/83*

*Appendix A*

# POSITION SPECIFICATION

## DELAWARE RIVER PORT AUTHORITY OF PENNSYLVANIA AND NEW JERSEY

POSITION TITLE: *SECRETARY*

POS. NO.: *00-3*

DEPT.: *President*

## JOB REQUIREMENTS

12 Years General Education

Kind of Special Education
- 4 Years BA or BS Degree or equivalent

Prior Experience:
Req. *10* yrs. *Exec. Administration*
Des. *10-15* yrs. *Exec. Administration*

*See Attachment 1*

## PHYSICAL FACTORS

Kind of Physical Effort: *Authority, Committee and Staff meetings. Public Contacts. Requires excellent executive poise under pressure.*

*5* % standing *90* % sitting

*5* % walking

*Appendix A*

Travel: *Moderate*

Type of Work: *Exec. Administration and top level meetings of the Authority*

Surroundings: *Good*

Illumination: *None*

RESPONSIBILITIES (Including Job Performance)

Equipment: *None*

Materials: *Authority seal*

Money: *Authorized Authority & PATCO check signer*

Confidential Matters: *Legal documents, minutes, all Authority official records.*

Public Contacts: *Moderate to much*

*Preparation and recording of all meetings of Authority and its Committees. Execution of legal documents. Consultive advisor to President & other executives of the Authority's staff. Co-signer of all checks. Assists in coordination of operational activities. In addition performs similar functions as an elected Officer of the Authority's subsidiary (PATCO).*

SUPERVISION

Degree of Supervision Exercised: *General*

*Appendix A*

Degree of Supervision Received: *Nominal*

Nature of Activities Supervised: *Authority documents, minutes, high level affairs. Preparation for and recording of all meetings of the Board and its sub-divisions.*

Approximate Number Employees Supervised: *General*

*Appendix A*

Attachment #1 SECRETARY

Complete understanding of Authority policies, operations and responsibilities. Ability to function in high administrative positions and situations; decisive; diplomatic; cool; analytical; able to handle public contacts well. Assists in coordination of Staff activities. Possesses executive expertise. Ability to prepare clear and concise reports and correspondence on Authority matters.

Approved by D.R.P.A. Commissioners
at the meeting of *6/15/83*

## APPENDIX B — RESUME OF WALTER T. PETERS, JR.

WALTER T. PETERS, JR.
16 Pin Oak Trail
Medford, New Jersey 08055
609-654-6542

PROFESSIONAL OBJECTIVE

To obtain a Management position within a government or business environment utilizing management/administration and organizational skills and abilities to accomplish established goals and objectives.

QUALIFICATIONS/ CAPABILITIES

Successful and diversified management career as a generalist in both the public and private sector — involving continuous policy-making, operations direction, and facilitation of projects in varied fields.

EMPLOYMENT

8/89 - 2/91

DELAWARE RIVER PORT AUTHORITY
Corporate Secretary / Chief of Staff
Responsible for direction and management of total daily operations of an Authority operating four bridges, realizing $100 million in annual revenues and employing a professional and skilled staff of approximately 1,000. Manage an annual budget of $50 million. Promoted the ports of the Delaware Valley while supervising daily activities of the Budget, Economic Development, and Port Operations, Bridges, Public Relations, Personnel, Security, and Engineering departments.

Chief of Staff of the Port Authority Transportation Company — PATCO — a

subsidiary company operating a major high-speed line, and facilitate daily operations. Maintain ongoing interaction with Engineering, Legal, Public Relations, and Government Affairs Departments, as well as Executive Office, Treasurer, and Administrative Services in all phases of Authority's daily operations.

- Handle all labor negotiations, conduct extensive research, and develop financial planning and projections for the future of the Authority. Compiled a twenty-year forecast for revenues and expenditures to allow for large-scale capital programs and to justify fare and toll increases.

- Reduced 1990 overtime in maintenance department by 50%.

- Transferred several departments into other divisions to acquire more logical flow of control.

- Instituted zero budgeting.

- Successfully negotiated Authority's first four-year contract with unions.

- Initiated an extensive Human Services Plan for Personnel Department in order to minimize and control rising costs - to be implemented!

*Appendix B*

6/84 - 8/89

PETERS ASSOCIATES
Moorestown, New Jersey
Consultant - Self Employed
Provided diversified consulting services in marketing/financial business and political environments.

5/81 - 6/84

UNITED STATES DEPARTMENT OF LABOR
Philadelphia, Pennsylvania
Regional Representative of Secretary of Labor, Region III
Acted as liaison between Department and State and local officials regarding arising problems and notified National and Regional Offices of issues concerning such. Continuously interfaced with labor officials and civic, public interest, business, and community groups to gain support for departmental programs and acquire feedback to improve such. Served as Public Advocate for those requiring assistance or information from Department. Assessed the regional receptiveness of proposed changes in legislation affecting individuals or groups and reported changes to Regional and National Offices. Assigned to special confidential and sensitive projects on behalf of national officials. As DOL Executive Committee member, met with Federal Regional Councils, Federal, State and local officials, external labor organizations, special interest groups, and CETA prime sponsors. Participated in major regional policy decisions.

*Appendix B*

5/80 - 5/81

PETERS ASSOCIATES
Trenton, New Jersey
Lobbyist & Political Consultant - Self Employed
Directed and managed State and national level legislative and congressional political campaigns. Acted as Deputy Regional Political Director for Reagan-for-President campaign and the Reagan-Bush campaign in New Jersey, Delaware, and New York. Continuously interacted with legislators at all levels.

3/77 - 5/80

NEW JERSEY REPUBLICAN STATE COMMITTEE
Trenton, New Jersey
Executive Director
Coordinated political activities of municipalities, counties, and congressional districts, and assisted in planning organizational programs prior to elections. Insured effective candidate recruitment, campaigns, publicity, fund-raising research, and polling.

6/73 - 3/77

NEW JERSEY AMERICAN REVOLUTION BICENTENNIAL CELEBRATION COMMISSION
Trenton, New Jersey
Executive Director
Responsible for all administrative and managerial duties, facilitating bicentennial programs throughout State. Coordinated the planning and implementation of

municipalities', counties', and non-profit agencies' programs to meet the diverse interests of citizens. Recruited, selected, trained, and provided ongoing support to staff. Interacted with all levels of top government officials, maintained close relationships with private sector leaders — business, labor, civic/public interest groups, the media, and State trade and professional associations.

Chairperson - Bicentennial Council of the Thirteen Original States
Duties same as above. Position required frequent travel among states, major cities, and Washington, D.C. Extensive public relations and public speaking required from New Hampshire to Georgia. Raised $4 million in commemorative items.

United States Representative
Appointed by President Gerald Ford as United States spokesperson for the 1975 Franklin/Jefferson Exhibit at the British Museum. Spoke throughout the United Kingdom.

4/68 - 6/73

STATE OF NEW JERSEY DIVISION OF BUILDING AND CONSTRUCTION
Trenton, New Jersey
Director
Responsible for supervision and management of all State construction programs with simultaneous projects up to

$300 million. Directed a staff of 150 including architects and engineers. Interacted with administrative and legislative leaders, Federal agencies, Department officials, and key leaders of business, the media, academia, and civic and public interest groups throughout State. Involvement included management and administrative duties, financial planning, budget preparation, cost control, high volume and extensive contract negotiation, construction/project coordination, and contract compliance within established regulations and requirements. Position required extensive public contact, sensitive negotiations, conference participation, and frequent liaison with key officials of State and Federal government.

Major projects: New Jersey School of Medicine and Dentistry - $175 million.

- Initial phases of construction of Giant Stadium in the New Jersey Sports Complex

EDUCATION

LaSALLE UNIVERSITY,
Philadelphia, Pennsylvania
B. A. in English — 1955

Additional training:

Rutgers University — Fellowship in Government — 1963-64

. . . Attended numerous management and investment seminars.

*Appendix B*

COMMUNITY AFFILIATIONS

South Jersey Chamber of Commerce
National Association of County Governments: former member, 8 years — Clean Air Chairman
New Jersey Association of Freeholders, 3 years
Newark Training and Construction Trades Authority
Newark Review Board, Chairman
President Gerald Ford's Committee for Opening of British Museum, the Franklin/ Jefferson Exhibit
Ronald Reagan 1980 Campaign, Regional Political Director — New York / New Jersey / Delaware

Personal & Professional References Furnished Upon Request

## APPENDIX C — EXCERPTS OF JURY TRIAL DATED DECEMBER 28, 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 91-6814

Philadelphia, Pennsylvania
December 28, 1992

WALTER T. PETERS, JR.

v.

DELAWARE RIVER PORT AUTHORITY OF PENNSYLVANIA AND NEW JERSEY

EXCERPT OF JURY TRIAL
BEFORE THE HONORABLE HARVEY BARTLE, III
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: THOMAS J. DUFFY, ESQUIRE
Independence Square West
The Curtis Center, Suite 1150
Philadelphia, PA 19106

For the Defendant: JOHN M. ELLIOTT, ESQUIRE
MARK J. SCHWEMLER, ESQUIRE
Elliott, Vanaskie & Riley
925 Harvest Drive
Blue Bell, PA 19422

*Appendix C*

Audio Operator: Helen A. Burkholder

Transcribed by: Grace Williams
Tracey J. Williams

(Proceedings recorded by Electronic Sound Recording; transcript produced by transcription service.)

* * *

[49] . . . the Delaware River Port Authority?

A Yes, sir.

Q Can you explain to the jury how?

A Yes, sir. The New York New Jersey Port Authority I felt was unique, and perhaps it is not, but with what I had seen in my background and past, it was unique in that they had agents — agencies that were action agencies, that did things like operate bud — bridges and operate a Patco High Speed Line. Then they had other agencies that were supportive in nature of those agencies, engineering would support Patco, would support bridges, legal would support the same type of thing and they had different types of control over top of them. That's basically the blueprint that I used to put that chart together because it seemed to make sense to me and it called for, quote, "The executive director," to be more of a policy type person out meeting with governors and senators and so forth and the day-to-day nuts and bolts gritty work was being done by the chief of staff.

Q We've talked about the budget, we've talked about this organizational chart. What other things did you do on a day-to-day

basis at the Delaware River Port Authority when you started working there?

A Expenditures were passed through me. Well, naturally, the budgets, personnel actions, disciplinary actions, just about everything that went on at the Delaware River Port [50] Authority.

Q You started with the Delaware River Port Authority in September of 1989?

A Yes, sir.

Q Up until the end of 1989 did you ever get any written reprimand from anybody?

A No, sir.

Q Did you ever get any complaints from anybody about the way you were working on the budget under Mr. McCaffrey?

A No, sir.

Q Ever get any complaints about your — did you start the organizational chart at that period; do you know when that started?

A I think I did. The only thing I have ever heard about my work and Mr. McCaffrey was Mr. Dickey said at one time I should get more money.

Q Now, in December of 1989 was there a process for reviewing people for raises at the Delaware River Port Authority?

A Yes, sir.

*Appendix C*

Q Can you explain to the jury — let me back up. Was there different categories of employees?

A Yes, there were groups of them — there were two groups of employees. I think they were — there was a group called the exempt group or the accepted group which amounted to a . . . .

* * *

[99] THE COURT: It's on the record —

MR. ELLIOTT: Okay.

THE COURT: — let's get on to the documents.

MR. ELLIOTT: Thank you.

MR. DUFFY: Thank you, your Honor.

(Sidebar discussion concluded.)

BY MR. ELLIOTT:

Q Mr. Peters —

A Excuse me.

(Pause in proceedings.)

Q I'm placing before you, sir, a document marked as Exhibit 1.

THE COURT: When you say Exhibit 1, Defendant's Exhibit 1.

MR. ELLIOTT: D-1, yes, sir.

THE COURT: Thank you.

BY MR. ELLIOTT:

Q It is a copy of the job description of the Delaware River Port Authority reflecting the authority of the secretary pursuant to the by-laws of the Authority. You're familiar with Exhibit 1, aren't you, sir?

A Yes, sir.

Q And am I correct in understanding that these by-laws and this job description pursuant to the by-laws set forth the responsibilities not only what you personally discharged as [100] secretary but which are discharged by anybody who would hold the position of secretary of the Port Authority?

A Yes.

Q And this document if we look at the second page says that it was approved by the commissioners of the Port Authority at a meeting on June 15th, 1983, isn't that correct?

A Yes, sir.

Q So this was in existence when you came to the Port Authority as secretary?

A Yes, sir.

Q Now —

A I assume it was.

Q Well, you not only assume it was, you know it was because you reviewed this document shortly after you got to the Port Authority, didn't you?

A I don't know what — in time frame, but I saw it in the first four or five months, I would say.

Q Did you ask anybody from the Port Authority, your friend Mr. McCaffrey or anybody to give you a copy of the job description outlining your responsibilities at the Port Authority before you agreed to join the Port Authority as the secretary?

A I didn't know there was such a thing as this, no, sir.

Q Did you ask anybody?

A The only person I would have asked is Mr. McCaffrey, no, . . .

* * *

[130] Q So the executive director gave those authorities relative to the bridge division, to act as director of the bridge division and not to you, didn't he?

A Yes, sir.

Q But still the acting director of the bridge position, instead of discharging the responsibility came to you, for your approvals on various of these items, didn't he?

A All expenditures and personnel actions, regardless of this or

whether it was PATCO or whether it was world trade division, all came across my desk. I was the central clearing point, I guess you would say.

Q That's not what this delegation says. This delegation does not specifically authorize you to be the clearing house for all pay increases and all approvals, does it?

A I didn't say that I had all approvals. I couldn't give a promotion or take one away.

Q But you said —

A Mr. McCaffrey would say to me what do you — more or less, would you check off on this, primarily with regards to purchasing. With regards to numbers. Was there money in the budget, was there not money in the budget.

Q I don't see that in this delegation letter.

A That's what was in fact happening.

Q I know, but it's not authorized by either the job restriction or the delegation letter, is it?

* * *

[224] . . . look at the first page of it, that the Port Authority you controlled, and that's your word, controlled an annual budget of $50 million, do you see that?

A Yes, I see it.

*Appendix C*

Q You stated that you were responsible for the direction and management of total, and that's your word, daily operations of an authority operating four bridges, realizing a $100 million in annual revenues, and employing a professional and skilled staff of approximately 1,000 people, do you see that?

A Yes, I see it.

Q And it is true that the Port Authority had a highly professional and skilled staff, isn't it?

A Are you reading from this here now, or —

Q Yes, I'm reading from what you wrote. It's true that the Port Authority —

A Would you point it out?

Q — had a highly professional and skilled staff, isn't it true?

A I thought they had a highly professional skilled staff, yes.

Q And you stated here that you managed an annual budget of $50 million, do you see that?

A Yes, I see it.

Q Did you in fact at the Port Authority manage an annual [225] budget of $50 million?

A I believe I did, Mr. Elliott, but this is a resume, sir. This is something that I'm putting out endeavoring to put my best foot forward in order to get employment.

*Appendix C*

Q But you have to tell the truth in resumes, don't you?

A I'm telling the truth in here. I'm telling what I did.

Q You have a problem in understanding the truth, Mr. Peters?

MR. DUFFY: Objection, your Honor.

THE COURT: Sustained.

BY MR. ELLIOTT:

Q Mr. Peters, do you believe that you're telling the truth when you send out a resume to all the people that Mr. Duffy said you sent it to, all of these letters, that you represent to those people that you were the chief of staff of the Delaware River Port Authority?

A Do I believe that when I sent this out that I did this work as the chief of staff?

Q No, no. That's what you'd like to say. I am asking you a factual —

MR. DUFFY: Objection, your Honor.

Q I am asking you a —

THE COURT: Sustained.

Q — a factual question. Did you tell the truth when you advised all of these people to whom you sent resumes in that [226] outside world, that you were in fact the chief of staff of the Delaware River Port Authority?

*Appendix C*

A I told all of the people that got this resume that I did the work of the chief of staff at the Delaware River Port Authority. That I was familiar with budgets, that I worked with budgets, that I managed budgets, that I managed employees, that I had hearings, that I handled purchasing, everything that a chief of staff did is what I did.

Q Mr. Peters, does your ego get between you and the truth?

MR. DUFFY: Objection —

THE WITNESS: No.

MR. DUFFY: — your Honor.

THE COURT: Sustained.

BY MR. ELLIOTT:

Q Are you delusional?

MR. DUFFY: Objection, your Honor.

MR. ELLIOTT: This is incredible.

THE COURT: Mr. Elliott, I have asked you not to editorialize. You ask questions and you can make whatever arguments and whether you think it's incredible is not the issue here. It's for the jury to make up their mind, and I will have no more of that.

MR. ELLIOTT: Mr. Peters —

THE COURT: Your view of the truth of the witness is totally irrelevant to this case.

[227] BY MR. ELLIOTT:

Q Mr. Peters, how could you hold yourself out as the chief of staff of the Port Authority when you and Mr. McCaffrey discussed that position, and the Commissioners told you no, you're not the chief of staff?

A I believe I answered that, Mr. Elliott. I did the work of a chief of staff.

MR. ELLIOTT: Would you ask him to answer that question, your Honor?

THE COURT: No, I will not, he's answered it, Mr. Elliott. Move on.

BY MR. ELLIOTT:

Q Were you the chief of staff of PATCO, also?

A Not to the extent of the Delaware River Port Authority. I was more of a person that overseen what was going on, but I didn't have the hands on control that I had at the Delaware River Port Authority.

Q And you had hands on control on the — because you've written here, total daily operations of the Authority, didn't you?

A I'm sorry, would you repeat the question?

*Appendix C*

Q You just used the word hands on control. I said then you had the hands on control at the Delaware River Port Authority of what you have written here, the "total daily operations"?

A My interpretation of hands on control is I was there. . . .

## APPENDIX D — INTEROFFICE MEMOS

DELAWARE RIVER PORT AUTHORITY

Interoffice Memorandum

Date: October 25, 1989

To: Thomas J. Auchter, Treasurer, Dir. & VP Finance Div.

From: Walter T. Peters, Jr., Secretary

Subject: Zero Based Budget

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In discussions with Joe Fanelle, Manager, Administration & Coordination, E&P Div., we discussed a zero based budget which is used by the State of New Jersey. I have asked Mr. Fanelle to put together a sample document and a "zero based budget kit" for my review.

While I am aware that this normally would come from your department, I thought a fresh approach might be desirous. I will keep you informed and will also appreciate any help you may give Mr. Fanelle.

WTP/cab

cc: J. R. Woodruff
J. Fanelle

*Appendix D*

DELAWARE RIVER PORT AUTHORITY

Interoffice Memorandum

Date: February 23, 1990

To: James Kendig, Actg. Dir. Admin. Div.

From: Walter T. Peters, Jr., Secretary

Subject: Light Duty Program

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You are hereby directed to prepare a program for light duty work for represented and non-represented employees for my review. This light duty program will encompass employees on Workman's Compensation and extended sick leave.

s/ Walter T. Peters, Jr.

CAB

*Appendix D*

DELAWARE RIVER PORT AUTHORITY

Interoffice Memorandum

Date: May 16, 1990

To: J.R. Woodruff, Dir. Engr. & Plng./Chief Engineer

From: Walter T. Peters, Jr., Secretary

Subject: Police Building

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I would appreciate your meeting with the new Chief Inspector of Police John T. Reim to discuss the feasibility of designing and constructing a new police building at 3rd & Elm Streets.

By copy of this memo, I expect full cooperation from other departments involved.

cc: Messrs. McCaffrey, Reim, Bonavitacola, Woodruff, Zagorski

WTP/cab

*Appendix D*

DELAWARE RIVER PORT AUTHORITY

Interoffice Memorandum

DATE: October 30, 1990

TO: MIS Division

FROM: Walter T. Peters, Jr., Secretary

SUBJECT: Purchase Requisitions Procedures

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All purchase requisitions are to be approved by the Division Director, then approved by Walt Peters, prior to forwarding to Purchasing Dept. for processing. If you have any questions, call Claire Branco.

CAB